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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

19 DURAFLAME, INC., a California
 20 corporation,

21 Plaintiff,

22 v.

23 HEARTHMARK, LLC, dba JARDEN HOME
 BRANDS, a Delaware corporation,

24 Defendant.

) Case No.: CV 12-01205-RS

) The Honorable Richard Seeborg, Presiding

) **STIPULATED PROTECTIVE ORDER**

STIPULATED PROTECTIVE ORDER

It is hereby stipulated among Plaintiff Duraflame, Inc. (“Plaintiff”) and Defendant Hearthmark, LLC dba Jarden Home Brands (“Defendant”) that the following procedures, once ordered and entered by the Court, shall govern the production of all documents, testimony, discovery responses, and other information in the above-captioned action (the “Action”), including information produced by parties currently named or later joined in this Action and all third parties subject to discovery herein.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that the Producing party believes in good faith to constitute or embody Confidential Information pertaining to its business (including matters that may have been disclosed to third parties, who are not under obligations of confidentiality, but not to the public generally). For example, confidential information may include, but is not limited to,

high-level technical information about products, high-level financial information, high-level marketing and sales information, and personnel information.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action. For purposes of disclosing Protected Material, an Expert cannot include: a past or current employee of a Party who is adverse to the Party retaining the person in this action. Pursuant to Section 7.4 below, each Producing Party reserves the right to object to any Receiving Party disclosing Highly Confidential - Attorneys’ Eyes Only of the Producing Party to an Expert.

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive technical, financial, competitive, or personnel information, which is not generally known by third parties and that the Producing Party would not normally reveal to third parties or would cause third parties to maintain in confidence either by agreements, policies, or procedures. The parties contemplate certain information, including documents, in this category to include but not be limited to: (i) new, presently unreleased products or services that have not been publicly disclosed or offered for sale; (ii) design files, design drawings, and/or design specifications relating to released or unreleased products, (iii) laboratory notebooks, (iii) prototypes, (iv) manufacturing techniques, (v) costs relating to both released and/or unreleased products and/or services; (vi) supplier, business partner and/or customer identity, price,

correspondence, and sales information; (vii) employee rosters, wages and records; (viii) training materials; (ix) investor rosters and level and type of investment; (x) financial and accounting information that is not made publicly available; (xi) business and marketing plans or analyses; (xii) product or service development information for any products or services not publicly disclosed or offered for sale; (xiii) the organizational structure and financial foundation (e.g., tax returns, financial statements, and supporting schedules) for a particular Party; (xiv) unpublished patent applications; (xv) trade secrets; (xvi) agreements and contracts; (xvii) contracts, including contractor agreements; (xviii) customer communications or surveys, (xix) meeting minutes; and (xx) documents related to the preparation of any materials related to this litigation not otherwise covered by the attorney client privilege.

2.8 House Counsel: attorneys who are employees of (i) a party to this action, and/or (ii) a parent, subsidiary, or affiliate of a party to this action, and their support staff including but not limited to paralegals.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their respective support staff).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: court reporters and their staff; persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits, graphics, demonstratives, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 **3. SCOPE**

5 The protections conferred by this Stipulation and Order cover not only Protected Material
6 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
7 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure to a
11 Receiving Party or that becomes part of the public domain after its disclosure to a Receiving Party
12 as a result of publication not involving a violation of this Order, including becoming part of the
13 public record through trial or otherwise; and (b) any information known to the Receiving Party
14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
15 obtained the information lawfully and under no obligation of confidentiality to the Designating
16 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations imposed by this
19 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court Order
20 directs otherwise. Final disposition shall be deemed to be the later of (1) dismissal of all claims
21 and defenses in this litigation, with or without prejudice; and (2) final judgment herein after the
22 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this litigation,
23 including the time limits for filing any motions or applications for extension of time pursuant to
24 applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
27 or Non-Party that designates information or items for protection under this Order must take care to
28 limit any such designation to specific material that qualifies under the appropriate standards. To

the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –

ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other Parties can ensure that only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Transcripts containing Protected Material shall have an obvious legend on the title page

1 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 2 pages (including line numbers as appropriate) that have been designated as Protected Material and
 3 the level of protection being asserted by the Designating Party. The Designating Party shall
 4 inform the court reporter of these requirements. Any transcript that is prepared before the
 5 expiration of a 21-day period for designation shall be treated during that period as if it had been
 6 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
 7 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 8 actually designated.

9 (c) for information produced in some form other than documentary and for any
 10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 11 container or containers in which the information or item is stored the legend "CONFIDENTIAL"
 12 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". If only a portion or portions of
 13 the information or item warrant protection, the Producing Party, to the extent practicable, shall
 14 identify the protected portion(s) and specify the level of protection being asserted.

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 16 designate qualified information or items does not, standing alone, waive the Designating Party's
 17 right to secure protection under this Order for such material. Upon timely correction of a
 18 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 19 in accordance with the provisions of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 22 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 24 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 25 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 26 original designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 28 process by providing to the Designating Party written notice of each designation it is challenging

1 and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
 2 been made, the written notice must recite that the challenge to confidentiality is being made in
 3 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
 4 resolve each challenge in good faith and must begin the process by conferring directly (in voice to
 5 voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
 6 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
 7 confidentiality designation was not proper and must give the Designating Party an opportunity to
 8 review the designated material, to reconsider the circumstances, and, if no change in designation is
 9 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the
 10 next stage of the challenge process only if it has engaged in this meet and confer process first or
 11 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 12 a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
 15 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
 16 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
 17 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
 18 such motion must be accompanied by a competent declaration affirming that the movant has
 19 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
 20 the Designating Party to make such a motion including the required declaration within 21 days (or
 21 14 days, if applicable) shall automatically waive the confidentiality designation for each
 22 challenged designation. In addition, the Challenging Party may file a motion challenging a
 23 confidentiality designation at any time if there is good cause for doing so, including a challenge to
 24 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
 25 this provision must be accompanied by a competent declaration affirming that the movant has
 26 complied with the meet and confer requirements imposed by the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating
 28 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose

unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) retained by the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) Professional Vendors to whom disclosure is reasonably necessary for this

1 litigation;

2 (f) during their depositions, witnesses to whom disclosure is reasonably necessary
3 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
4 otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
6 bound by the court reporter and may not be disclosed to anyone except as permitted under this
7 Stipulated Protective Order.

8 (g) the author or recipient of a document containing the information or a custodian
9 or other person who otherwise possessed or knew the information without first reviewing the
10 Protected Material.

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
13 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation;

18 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
19 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
21 followed;

22 (c) the Court and its personnel;

23 (d) Professional Vendors to whom disclosure is reasonably necessary for this
24 litigation; and

25 (e) the author or recipient of a document containing the information or a custodian
26 or other person who otherwise possessed or knew the information without first reviewing the
27 Protected Material.

28 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL

1 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

2 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
3 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
4 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating
6 Party that (1) sets forth the full name of the Expert and the city and state of his or her primary
7 residence, (2) attaches a copy of the Expert’s current resume and executed “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A), (3) identifies the Expert’s current employer(s), and (4)
9 identifies (by name and number of the case, filing date, and location of court) any litigation in
10 connection with which the Expert has offered expert testimony, including through a declaration,
11 report, or testimony at a deposition or trial, during the preceding five years.

12 (b) A Party that makes a request and provides the information specified in the
13 preceding respective paragraphs may disclose the subject Protected Material to the identified
14 Expert unless, within 14 days of delivering the request, the Party receives a written objection from
15 the Designating Party. Any such objection must set forth in detail the grounds on which it is
16 based.

17 (c) A Party that receives a timely written objection must meet and confer with the
18 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
19 agreement within seven days of the written objection. If no agreement is reached, the Party
20 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
21 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking
22 permission from the Court to do so. Any such motion must describe the circumstances with
23 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,
24 assess the risk of harm that the disclosure would entail, and suggest any additional means that
25 could be used to reduce that risk. In addition, any such motion must be accompanied by a
26 competent declaration describing the Parties’ efforts to resolve the matter by agreement (*i.e.*, the
27 extent and the content of the meet and confer discussions) and setting forth the reasons advanced
28 by the Designating Party for its refusal to approve the disclosure.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
 2 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 3 outweighs the Receiving Party's need to disclose the Protected Material to the Expert.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 5 **OTHER LITIGATION**

6 If a Receiving Party is served with a subpoena or a court order issued in other litigation
 7 that compels disclosure of any information or items produced in this action by a Designating Party
 8 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", that
 9 Receiving Party must:

10 (a) promptly notify in writing the Designating Party. Such notification shall
 11 include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue
 13 in the other litigation that some or all of the material covered by the subpoena or order is subject to
 14 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
 15 and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 17 Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order in the other litigation, the Party
 19 served with the subpoena or court order shall not produce any information designated in this
 20 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 21 before a determination by the court from which the subpoena or order issued, unless the Party has
 22 obtained the Designating Party's permission. The Designating Party shall bear the burden and
 23 expense of seeking protection of its confidential material in that court – and nothing in these
 24 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
 25 disobey a lawful directive from another court.

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1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
 2 **THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-
 4 Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 5 ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with
 6 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
 7 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce
 9 a Non-Party's confidential information in its possession, and the Party is subject to an agreement
 10 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

11 1. promptly notify in writing the Requesting Party and the Non-Party
 12 that some or all of the information requested is subject to a confidentiality agreement with a Non-
 13 Party;

14 2. promptly provide the Non-Party with a copy of this Stipulated
 15 Protective Order, the relevant discovery request(s), and a reasonably specific description of the
 16 information requested; and

17 3. make the information requested available for inspection by the Non-
 18 Party.

19 (c) If the Non-Party fails to object or seek a protective order from this court
 20 within 14 days of receiving the notice and accompanying information, the Receiving Party may
 21 produce the Non-Party's confidential information responsive to the discovery request,
 22 appropriately designated. If the Non-Party timely seeks a protective order, the Receiving Party
 23 shall not produce any information in its possession or control that is subject to the confidentiality
 24 agreement with the Non-Party before a determination by this Court. Absent a Court Order to the
 25 contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its
 26 Protected Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
6 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery order
15 that provides for production without prior privilege review. Pursuant to Federal Rules of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product protection,
18 the parties may incorporate their agreement in the stipulated protective order submitted to the
19 court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Protective Order. Similarly, no Party
26 waives any right to object on any ground to use in evidence of any of the material produced
27 pursuant to this Protective Order.

28 12.3 Filing Protected Material. Without written permission from the Designating Party

or a Court Order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the Court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this litigation, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding the foregoing, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: _____

Attorneys for Plaintiff

4
5 DATED: _____

Attorneys for Defendant

7
8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9
10 DATED: 7/19/12



The Honorable Richard Seeborg
United States District Judge